

CHAPTER 20.1

CONDITIONAL PRIVILEGES

Sec. 20.1-1. Purpose and Intent (9/24/03)

The purpose of this chapter is to recognize that there are certain uses which, because of their unique characteristics, cannot be permitted by right in a particular district or districts, without consideration, in each case, of the impact of those uses upon neighboring land and of the public need for the particular use at the particular location. These uses may be allowed to locate within districts under the controls, limitations and regulations of a conditional privilege if granted by the City Council after review and recommendation by the Planning Commission.

Accordingly, it shall be the duty of the City Council under the provisions of this chapter to evaluate the impact and the capability of each conditional privilege, and to stipulate such conditions and restrictions as will assure the use being compatible with the neighborhood in which it is located, both in terms of existing land uses and conditions and in terms of development proposed or permitted by right in the district and area.

Conditional privileges, when required, shall be secured from the City Council, after review and recommendation by the Planning Commission, as provided in Section 15.2-2286 of the Code of Virginia, 1950, as amended.

Sec. 20.1-2. Application Required

Any property owner, developer, optionee, prospective occupant, lessee, government official, department, board or bureau may file with the City Planning Department an application for a conditional privilege. No application, however, will be accepted by the Planning Department until all of the information identified in this chapter is furnished on the conditional privilege form provided by the city. In addition, a non-refundable fee of six hundred and fifty dollars (\$650.00) shall accompany the application.

Sec. 20.1-3. Pre-Application Conference

Prior to the formal submission of an application, the Planning Department, if requested, will meet with the applicant and will review the criteria and standards governing the conditional privilege process. In no way shall a pre-application conference be construed to equate to the approval of any subsequent application.

Sec. 20.1-4. Application Requirements

Each conditional privilege application shall feature, unless waived by the City's Planning Department, the following information:

- (a) A legal description of the property for which the conditional privilege is requested, including the actual dimensions and shape of the property, as well as the current zoning classification.
- (b) The names and addresses of the owners of the subject property and their agents, if any, or the notarized consent of the property owner if the applicant is not the property owner.
- (c) A location map showing the subject property and adjacent streets and roads, water bodies, subdivisions, political boundaries, zoning patterns, and the uses of adjacent properties and the name(s) and addresses of the owner(s) of the subject property.
- (d) A site plan of the subject property showing its boundaries, existing and proposed buildings and uses, yards, open spaces, pedestrian walkways, landscaping, screening and buffering, fences, signs, access to the site, and on-site parking and vehicular circulation.
- (e) Easements, water bodies, flood plains, wetlands and other natural features.
- (f) Existing and proposed streets, utilities and drainage facilities within one-quarter mile of the subject property.
- (g) Elevation drawings and general floor plans of all buildings.
- (h) A plan schematic, including the name of the property owner, as well as the name of the person who prepared the plan, together with the north point, scale (one inch equals thirty feet) and number of sheets of the plan.
- (i) Information regarding the impact and/or demand the proposed use will place on the city's public services and facilities, including but

not limited to traffic, public safety services, water, sewer and utility services, education, and other community facilities and services.

- (j) Proof that all city and state ad valorem taxes due upon the property have been paid in full.
- (k) The applicant's response to each of the standards for review contained in Section 20.1-7 of this chapter.
- (l) All plan requirements shall be submitted in writing and shall be filed with the city's planning department.
- (m) All statements, plan profiles, elevations and other materials shall become part of the record of the hearing on the conditional privilege application.
- (n) Required plans shall be submitted in such numbers as determined by written policy of the City Planning Department.

Sec. 20.1-5. Public Hearing Requirements

The City Planning Commission shall not recommend nor the City Council act upon any request for a conditional privilege unless the application has been advertised and public hearings held in accordance with the following criteria:

- (a) Public notice of the Planning Commission hearing and the City Council hearing shall be given by the publication once a week for two (2) successive weeks in some newspaper having general circulation in the city. Such notice shall state where the conditional privilege application may be examined. The notice shall also specify the time and place of hearing at which persons affected may appear and present their views, not less than six (6) days nor more than twenty one (21) days after the second advertisement shall appear in such newspaper.
- (b) For those conditional privileges involving twenty five (25) or fewer parcels of land, then in addition to the advertising as required above, written notice shall be given at least five (5) days before the hearing to the owner of owners, their agents, or the occupants of each parcel affected, all abutting property, and property immediately across the street or road from the property affected. If any portion of the affected property is within an R-OS Subdivision, then written notice shall be given to such incorporated property owners' association within the R-OS Subdivision that has members owning property located within two thousand (2,000) feet of the affected property. In

the case of a condominium or cooperative, the written notice may be mailed to the unit owners' association or the property lessees' association, respectively, in lieu of each individual unit owner. Notice shall also be given to the owner, his agent or the occupant, of all abutting property and property immediately across the street or road from the property affected which lies in an adjoining municipality. Notice sent by first class mail to the last known address of such owner as shown on the current real estate tax assessment records shall be deemed adequate; provided the planning department shall make an affidavit that such mailings have been made and file such affidavit with the papers in the case.

- (c) For those conditional privileges involving more than twenty five (25) parcels of land, then in addition to the advertising required above, written notice shall be given at least five (5) days before the hearing to the owner, owners or their agent of each parcel of land involved.
- (d) Nothing in this section shall be construed as to invalidate any subsequently adopted amendment because of the failure of the planning department to give written notice to the owner, owners or their agent of any parcel involved.

A party's actual notice of, or active participation in, the public hearing required herein shall waive the right of that party to challenge the validity of the proceeding due to the failure of the party to receive the written notice required herein.

Sec. 20.1-6. Procedure for Review

Upon submission of and acceptance of an application for a conditional privilege, the following review procedures shall apply:

- (a) *Action by the Planning Department.* The Planning Department shall transmit the request to appropriate City departments and other agencies affected by the proposal and retrieve comments, and develop any conditions customary and necessary to mitigate the impact of the conditional privilege on adjoining properties considering the requirements of the ordinance and the city's comprehensive plan. The City departments and other agencies affected by the proposal will have 15 business days to respond to the

planning department's request. Within 45 days of receipt of a completed conditional privilege application, including any comments from city departments and other agencies, the Planning Department shall forward the application to the Planning Commission indicating the manner in which the proposed conditional privilege complies or does not comply with the applicable provisions of this chapter and any recommendations the planning department may have regarding approval, disapproval or conditions to be attached to the proposed use or plans.

- (b) *Action by the Planning Commission.* After receiving the conditional privilege application, with all pertinent related material, the Planning Commission shall give notice of and hold a public hearing. After conducting a public hearing and reviewing the application for compliance with the provisions of this chapter, the Planning Commission shall make a recommendation to the City Council. The Commission may recommend approval or disapproval, or that additional requirements or conditions shall be attached in accordance with this chapter. The Commission shall take action and forward a report to the City Council within 45 days after its public hearing, unless the applicant requests additional time to consider or to prepare revised plans.
- (c) *Action by the City Council.* Upon receiving the recommendation of the Planning Commission, the City Council shall hold a public hearing on the application. The City Council may approve or disapprove the application, may accept or modify the conditions recommended by the Planning Commission, or may attach additional conditions consistent with the provisions of this chapter. Additional safeguards, conditions and requirements may be added by the City Council as deemed appropriate in order to protect the public interest. The City Council may also refer the application back to the Planning Commission for further consideration or advice.
- (d) *Withdrawal of application.* An application for a conditional privilege may be withdrawn at any time; however, if the request for withdrawal is made after publication of the notice of public hearing, there shall be no refund of conditional privilege fees. If the request for withdrawal is made after publication of the notice of public hearing, no application for the same use on all or any part of the

same property shall be filed within six (6) months of the withdrawal date.

- (e) *Deferral of application on request of petitioner.* Deferral of consideration of any application filed may be requested by the petitioner. If the request for deferral is made after publication of the notice of hearing, such deferral shall be only with the consent of either the Planning Commission or the City Council, whichever body advertised the hearing. In either case, the applicant shall bear the additional advertising costs. Applications deferred by the Planning Commission at the request of the petitioner should not be deemed as being referred to the Planning Commission until such time as the matter has been rescheduled on the Commission's agenda.
- (f) *Re-filing following denial.* Upon denial of a conditional privilege application, no application for the same use on all or any part of the same property shall be filed within one (1) year of the denial.

Sec. 20.1-7. Standards for Review

A conditional privilege shall be approved only when the City Council is satisfied that the use and the operation thereof meets or exceeds the following review standards:

- (a) That the conditional privilege as submitted or modified will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare and shall conform to the city's comprehensive plan and to official policies adopted in relation thereto, including this chapter.
- (b) That the granting of the conditional privilege will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- (c) That adequate utilities, roads, storm drainage and/or other necessary public facilities and improvements, including parking, have been or will be provided.
- (d) That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion on the public streets.
- (e) That the proposed conditional privilege is not contrary to the goals and objectives of the Hampton Zoning Ordinance.

- (f) That the conditional privilege shall, in all other respects, conform to the applicable regulations of the zoning district classification in which it is located.
- (g) That the conditional privilege will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially impair the use of other property within the immediate neighborhood. Specific factors to be considered by the City Council include the following:
 - 1. Whether the conditional privilege will adequately provide for safety from fire hazards and have effective measures of fire control.
 - 2. The level and impact of any noise emanating from the site, including that generated by the proposed use, in relation to the uses in the immediate area.
 - 3. The glare or light that may be generated by the proposed use in relation to uses in the immediate area.
 - 4. The proposed location, lighting and type of signs in relation to the proposed use, uses in the area, and the sign requirements of the Zoning Ordinance.
 - 5. Whether the conditional privilege will result in the preservation or destruction, loss or damage of any topographic or physical, natural, scenic, archaeological or historic feature of significant importance in the area or neighborhood.
 - 6. The compatibility of the proposed use with other existing or proposed uses in the neighborhood, and adjacent parcels.
 - 7. The proposed days and hours of operation associated with the conditional privilege, including the number of full and part-time employees.
 - 8. Whether the proposed use will be adequately served by available public facilities and services.
 - 9. The location and type of any fuel and fuel storage.
 - 10. The location and use of any anticipated accessory uses and structures.
 - 11. The location and screening of parking and loading spaces and/or areas.
 - 12. The location and nature of any proposed security features and provisions.

13. Any anticipated odors, fumes, dust, vibrations or other factors which may be generated by the uses on site.
14. The location and use of any existing non-conforming uses and structures associated with the proposed use.
15. The nature and extent of existing or proposed landscaping, screening and buffering on the site and in the neighborhood.

Sec. 20.1-8. Conditions and Guarantees

Before granting any conditional privilege, the Planning Commission may recommend, and the City Council may stipulate such conditions and restrictions upon the use, operation, establishment, location and construction of the conditional privilege as are necessary to protect the public interest and to secure compliance with the standards and requirements specified in this chapter. Conditions, in addition to the standards noted in Section 20.1-7 of this chapter, may include but are not limited to those related to fencing, planting or other landscaping, additional set backs from property lines, location and arrangement of lighting, setting of reasonable time limitations and other reasonable requirements deemed necessary to safeguard the interest of the general public. The City Council may require a guarantee or bond as recommended by the Planning Department, to ensure that conditions imposed will be complied with.

Sec. 20.1-9. Conditional Privilege Amendments

Any amendment or change of substance to an approved conditional privilege shall be subject to the same procedures and standards as for a new application. Minor modifications to approved site plans or building details may be authorized by the Planning Department when such modifications do not: significantly alter the boundaries of the property; conflict with specific requirements of this chapter or conditions of the approved conditional privilege; decrease the width or depth of any yard, setback or buffer area; significantly alter points of access to the property or the internal arrangement of site plan elements; or have an appreciable effect on surrounding properties.

Sec. 20.1-10. Compliance with Approved Plans

Failure to comply with approved plans or any conditions of a conditional privilege shall constitute a violation of the provisions of this chapter and shall be cause for revocation of the conditional privilege by the City Council and other remedies of the law.

Sec. 20.1-11. Expiration of Conditional Privileges

An approved conditional privilege shall become null and void if no building permit to construct the authorized improvements has been issued within 12 months of the date of approval by the City Council. A conditional privilege for which no building permit is required shall become null and void if the use is not established within 12 months of the date of approval by the City Council. Upon written request by the applicant, the planning department may grant one 60-day extension of the expiration date of a conditional privilege.

Sec. 20.1-12. Abandonment

An approved conditional privilege shall become null and void if the property is not used for the permitted use for a period of six consecutive months. In making this determination the City may consider such matters as the issuance of a building permit, a business license, utility connections and such related factors.

Sec. 20.1-13. Revocation

A conditional privilege shall be revoked by the city in cases of abandonment, failure to commence the activity, and for repeated or continuing violations of the conditions accompanying the conditional privilege. Revocation shall also result if false, fraudulent, or misleading information is supplied by the applicant. The consideration of a possible revocation shall follow the procedure set forth in this chapter for approving the conditional privilege.

Sec. 20.1-14. Existing Uses

Any use permitted as a conditional privilege in the district in which it is located and for which no conditional privilege has been approved shall be considered a nonconforming use, provided such use was legally established prior to the effective date of this ordinance.

Sec. 20.1-15. Application to the Property

The conditional privilege and all its conditions shall apply to the property for which it is issued so long as such property is used for the permitted purpose, regardless of changes in the ownership of the property. Upon change of ownership and/or management of the property, the previous owner/operator as well as the new owner/operator shall both notify the Zoning Administrator, in writing, of the change in ownership and/or management. Such notification shall include documentation that the new owner/operator has been advised of the conditions of the conditional privilege.

Sec. 20. 1-16. Time Limitations

It shall be the prerogative of the City to impose a time limitation when granting a conditional privilege if, in the estimation of the Planning Department, the Planning Commission and the City Council, the proposed use is of such a nature that a mandatory review shall be necessitated to affirm that the conditional privilege is in compliance with all conditions and standards noted in this chapter.

If a time limit is imposed, the recipient of the conditional privilege will be required to file a statement and complete a checklist provided by the planning department documenting compliance with all the standards governing the conditional privilege.

Upon review of the statement and checklist, the Planning Department will recommend a course of action to the Planning Commission and the City Council concerning the continuance of the conditional privilege and whether any additional time limitations shall be attached to the use.

Sec. 20. 1-17. Uses Permitted in All Districts

Subject to the securing of a conditional privilege from the City Council, the following uses shall be permitted in all districts:

- (1) Trap shooting range (minimum area of four (4) acres with a minimum width of two hundred (200) feet) or skeet shooting range (minimum area of nine (9) acres with a minimum width of four hundred fifty (450) feet), the conditional privilege for which may be rescinded subject to such time limitations as may be prescribed at the time of the granting of the conditional privilege.
- (2) The sale of nursery, greenhouse, or agricultural products, and accessory supplies incidental thereto, provided that:
 - (a) The minimum lot size for such a use shall be two (2) acres;
 - (b) The owner and operator of the premises occupy a residence on site;
 - (c) There be no rental, repair, or sale of motorized equipment or tools other than hand tools;
 - (d) The operations of such a use, including storage, but excluding outside plant production storage and sale, be conducted within a completely enclosed structure;
 - (e) There be no sale or storage of liquid or dry chemicals unless same be pre-packaged by the manufacturer;
 - (f) There may be only one unlighted exterior sign in accordance with local zoning ordinances; and
 - (g) Off-street parking on site is provided in conformance with Chapter 19 of the Zoning Ordinance.

Sec. 20.1-18. Uses Permitted in Specific Districts

- (1) The evaluation of any request for a conditional privilege for day care 3 shall include the traffic impact of the proposed use on the surrounding road network. Any conditional privilege for day care 3 in a residential district shall automatically expire and become null and void if the property is not used for the permitted purpose for a continuous six (6) month period.
- (2) Any conditional privilege for a tourist home/bed and breakfast in a residential zoning district shall automatically expire and become

null and void if the property is not used for the permitted purpose for a continuous six (6) month period.

Sec. 20.1-19. Posting of Conditional Privilege

Following approval by City Council of a conditional privilege application, the applicant must post in a conspicuous place on the property for which the conditional privilege was granted the condition(s) of its approval. The condition(s) of approval must remain posted for as long as the approved use continues.